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January 7, 2005

VIA FACSIMILE

To: Mai
Group Art Unit No. 2851
U.S.P.T.O.

Facsimile No.: (703) 872-9306

From: Sean M. McGinn

Facsimile No.: (703) 761-2375 (76)

Re: June 30, 2004 Deposit Account Statement
U.S. Patent Application Serial No. 09/627,456
Our Ref: WAK.059

Dear Mai:

A charge of \$950.00 was erroneously deducted for fee code 1253, (Petitions to the Commissioner), from our Deposit Account 50-0481 on June 30, 2004.

However, due to the USPTO's delay in providing the file to the Examiner, no extension fee would have been required as all the outstanding rejections were overcome by filing the January 29, 2004, Response and Submission of Verified Translation. Nonetheless, Conditional Petition for Extension of Time was made, and the Commissioner charged the extension fees to Attorney's Deposit Account No. 50-0481. In view of the foregoing, Applicant requests a Refund of \$950.00 for the Extension of Time fee caused by the USPTO delay.

Very truly yours,



Sean M. McGinn

SMM/has
Enclosure
Total No. of Pages Transmitted: 4

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JAN 07 2005

Docket No.: NEC00P063-Tob
WAK.059
09/627,456

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No. 6,801,313 B1

Kazuki Yokota

Serial No.: 09/627,456

Group Art Unit: 2851

Filed: July 27, 2000

Examiner: Cruz, Magda

For: OVERLAY MARK, METHOD OF MEASURING OVERLAP ACCURACY,
METHOD OF MAKING ALIGNMENT AND SEMICONDUCTOR DEVICE
THEREWITH

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

ATTENTION: FINANCE DIVISION

REQUEST FOR REFUND

Sir:

The undersigned respectfully requests a refund in the amount of \$950.00 for the above-identified patent application.

In response to the Office Action dated **October 30, 2003**, the Applicant filed an Notice of Appeal and Conditional Petition and Fee for Extension of Time to keep the above case alive.

After Applicant timely filed a response to the Office Action on January 29, 2004, by courier, Applicant contacted Examiner Cruz on numerous occasions (i.e., regarding the Status of the Response, including faxing a copy of the January Response and date-stamped postcard to the Examiner on February 23, 2004). It is noted that the January 29, 2004, response included a Submission of Verified Translation to overcome all of the outstanding prior art rejections.

In an Interview Summary of March 22, 2004, Supervisory Examiner Adams and Examiner Cruz expressly indicated that they were still waiting for the previously filed Response to be scanned pursuant to the implementation of the USPTO's Image File Wrapper System. Per Supervisor Adam's instructions, on April 15, 2004, Applicant re-submitted the Response along with the Verified English Translation of the Priority Document and a copy of the Attorney's Post Card Filing Receipt, date stamped at the USPTO on January 29, 2004. (See Enclosure).

Subsequent to the filing, Applicant contacted Supervisor Adams and Examiner Cruz on April 26, 2004, where the Examiners expressly indicated that they still had not received the Response, which apparently was still being scanned.

Applicant unsuccessfully tried on April 30, 2004, to reach Supervisor Adams and Examiner Cruz. Accordingly, as indicated above, Applicant filed the Notice of Appeal and the Conditional

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Docket No.: NEC00P063-TOb
WAK.059
09/627,456

Petition and Fee for Extension of Time to prevent the Application from being abandoned.

Thus, Applicant included a check of \$330.00 for the Notice of Appeal but respectfully requested that the Applicant not be charged the Fee for Extension of Time of \$950.00 as the timely filed Response was still being scanned at the USPTO, and the delay in obtaining the Examiner's reply (e.g., an Advisory Action or Notice of Allowance) and necessity for extension were due solely to the USPTO's delay.

But for the USPTO's delay in providing the file to the Examiner, no extension fee would have been required as all the outstanding rejections were overcome by filing the January 29, 2004, Response and Submission of Verified Translation. Nonetheless, Conditional Petition for Extension of Time was made, and the Commissioner charged the extension fees to Attorney's Deposit Account No. 50-0481. In view of the foregoing, Applicant requests a Refund of \$950.00 for the Extension of Time fee caused by the USPTO delay.

Respectfully submitted,



Sean M. McGinn
Registration No.: 34,386

Date: 1/7/05
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Customer No. 21254

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WPK 059 FZ/9eb
 Attorney's Post Card Filing Receipt
 Serial Number: 09/627,456

Papers Filed On: 1/29/04

Attorney's Docket Number: NEC008063-10 ☒ Patent ☐ Trademark

Applicant's Name: Kazuki Yokota Application Filing Date: 7/27/00
 Papers Filed Herewith:

- ☒ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ ___ Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts
☒ Other Sub of Verified English translation of the
Priority Document
 Fees Filed Herewith: \$ ___ ☐ Check ☐ Charge Deposit Account: ___

Hand Delivered

WPK 059 FZ/9eb
 Attorney's Post Card Filing Receipt
 Serial Number: 09/627,456

Papers Filed On: 1/29/04

Attorney's Docket Number: NEC008063-10 ☒ Patent ☐ Trademark

Applicant's Name: Kazuki Yokota Application Filing Date: 7/27/00
 Papers Filed Herewith:

- ☒ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ ___ Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☐ Missing Parts
☒ Other Sub of Verified English translation of the
Priority Document
 Fees Filed Herewith: \$ ___ ☐ Check ☐ Charge Deposit Account: ___

Hand Delivered

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